

0230/0400 0500 0130 2811 \$ #7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of

KOIKE et al.

Appln. No.: 09/725,496

Filed: November 30, 2000

For: Light-Emitting Device Using Group III
Nitride Group Compound Semiconductor



Group Art Unit: Unassigned

Examiner: Unassigned

* * *

Date: January 25, 2001

PETITION TO ACCEPT DRAWINGS
AND TO GRANT ORIGINAL FILING DATE

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

In response to the Notice of Incomplete Nonprovisional Application dated January 03, 2001, Applicants respectfully request the Commissioner to accept the drawings filed on January 17, 2001 and to grant the original filing date of November 30, 2000 for the above-referenced application.

The U.S. Patent and Trademark Office (PTO) has failed to grant the original date of November 30, 2000 for the above-referenced application because, according to the Notice of Incomplete Nonprovisional Application:

The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." Applicant should reconsider whether the drawings are necessary under 35 U.S.C. (first sentence).

However, Applicants believe that a drawing is not required for the present invention. Therefore, the PTO should afford the present invention a filing date of

Repln. Ref: 05/15/2002 AKELLEY 0011030300
DAB:033975 Name/Number:09725496
FC: 704 \$130.00 CR

Adjustment date: 05/15/2002 AKELLEY
01/26/2001 SDENB0B1 00000090 09725496
01 FC:122 -130.00 OP

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November 30, 2000 for the reasons which follows. The MPEP § 608.02 (a), under the heading "*Handling of Drawings Requirements Under the First Sentence of 35 U.S.C. §113*", states that the PTO should not treat an application without drawings as incomplete if the drawings are not required. A drawing is not required for a filing date under 35 U.S.C. §§ 111 and 113 if the application contains:

(3) at least one claim directed to a coated article or product or to an article or **product made from a particular material or composition** (i.e., an article of known and conventional character (e.g., a table), coated with or made of a particular composition (e.g., a specified polymer such as polyvinyl-chloride); (*Emphasis added.*)

Thus, Applicants believe that since not just one claim but all of the claims of the present application are directed to a light-emitting semiconductor device, (i.e., an article of known and conventional character) made of a group III nitride compound, the present invention constitutes a product made from a particular material or composition. Therefore, the present invention **does not require a drawing in order to be granted a filing date.**


It is Applicants' position that the present invention should be treated as discussed in §608.02(a) of the MPEP under the heading *Handling of Drawing Requirements Under the Second Sentence of 35 U.S.C. 113*, "which deals with the situation wherein a drawing is not necessary for the understanding of the invention but the subject admits of illustrations by a drawing and the applicant has not furnished a drawing. **The lack of the drawing in this situation does not render the application incomplete but rather is treated as an informality. A filing date will be accorded with the original presentation of the papers, despite the absence of the drawings.**" (*Emphasis added.*) In such a situation, the PTO allows the applicant to correct the "informality" by providing the applicant with an opportunity to submit the drawings.

Accordingly, Applicants respectfully request that the Commissioner accept the drawings filed on January 17, 2001 and grant the original filing date of November 30, 2000 for the above-referenced application.

Submitted herewith is the petition fee of \$130.00 as required by 37 C.F.R. §1.17(i). In the event any variance exists between the amount enclosed and the PTO fees, the Commissioner is hereby authorized to charge or credit such variance to Deposit Account No. 03-3975, Order No. 031317/275294.

Respectfully submitted,

PILLSBURY WINTHROP L.L.P.

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WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/725,496	11/30/2000	Masayoshi Koike	PM 275294 FOO-212-US

CONFIRMATION NO. 8880

FORMALITIES LETTER



OC000000005649254

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NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)).

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(i)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition.

- The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." *Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).*

The required items noted below SHOULD be filed along with any items required above. The filing date of this nonprovisional application will be the date of receipt of the items required above. The items noted below must be filed no later than **TWO MONTHS FROM THE FILING DATE ACCORDED THIS APPLICATION**.

- The statutory basic filing fee is missing.
Applicant must submit \$ 710 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).
- Total additional claim fee(s) for this application is \$324.
 - \$324 for 18 total claims over 20.
- The oath or declaration is missing.
- The balance due by applicant is \$ 1034.

A copy of this notice MUST be returned with the reply.

Sm
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Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE